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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,618	01/16/2002	Michael Miravet Sorribes	81421-4006	6451

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WINSTON & STRAWN  
PATENT DEPARTMENT  
1400 L STREET, N.W.  
WASHINGTON, DC 20005-3502

EXAMINER
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BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 05/06/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/050,618

Applicant(s)

Michael Sorribes

Examiner

Michael Brown

Group Art Unit

3264

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-6 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-11 and 14-16 is/are rejected.
- ☒ Claim(s) 12-13 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-6, 8-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Coffey '262.

Coffey '262 discloses in figures 1-2 a non-invasive device for correcting a deformation in a human external ear comprising a fixture (the entire device shown in figure 1), a first adhesive 18, two separate parts (10, 12), stuck together with a second adhesive 16, the fixture includes a double coated tape (10 is coated with adhesive on both sides), textile material (cloth) and a detachable film 10.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7-8 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Pitoux FR '718.

Pitoux discloses in figures 1-3 a non-invasive device for correcting a deformation in a human external ear comprising a fixture 1, a first adhesive (there is an adhesive on both sides of the fixture), a fold (abstract, lines 2-3), a permanently deformable material

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(plastic), the fixture includes a fixing sheet (the sheet of 1) having two sides and a folding edge (abstract, lines 2-4), an adhesive (abstract, line 2) on both sides of the sheet, a double-coated tape (abstract, line 2) and a method of treating a permanent ear deformation.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pitoux in view of Dubrowski '838.

Pitoux discloses in figures 1-3 a non-invasive device, substantially as claimed as set forth above. However, Pitoux does not disclose the fixture being made of metal. Dubrowski teaches in figure 1 a non-invasive device for correcting a deformation in a human external ear comprising a fixture 1 made of metal (steel). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the fixture disclosed by Pitoux could be fabricated of metal as taught by Dubrowski in order to make the fixture of a material that is more durable than plastic.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coffey '262 in view of Godley.

Coffey '262 discloses in figures 1-2 a non-invasive device, substantially as claimed. However, Coffey does not disclose the material of the device being gauze.

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Godley teaches in figures 1-5 an ear dressing comprising a gauze material (liner 34 is made of a gauze material). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the device disclosed by Coffey could be made of a gauze material as taught by Godley because gauze is a soft material that would absorb blood of any other fluids coming from the body without chafing the ear.

***Allowable Subject Matter***

Claims 12-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Parvin and Dirksing each disclose a bandage. Although each of these references is pertinent prior art, neither was used to reject any claims, in the first office action.

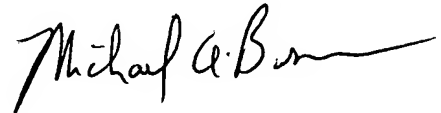
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 703-308-2682. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown  
April 29, 2004

A handwritten signature in black ink, appearing to read "Michael A. Brown". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**MICHAEL A. BROWN**  
**PRIMARY EXAMINER**